In the Supreme Court

OF THE

United States

Supreme Court, U. S.
FILED
OCT 23 1944
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1944

No. 624

H. M. LORBER, ROY R. DEMPSTER, J. R. MASON, ARTHUR LORBER, FRANCES V. WHEELER, GILBERT MOODY, J. B. BLOOM, as Trustee of the Bloom Company, a Trust Estate, and STANLEY W. LANDIS,
Petitioners,

vs.

VISTA IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

W. COBURN COOK,
Berg Building, Turlock, California,
Counsel for Petitioners.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

Page

Petition for Writ of Certiorari..... 1

Opinion Below 2

Jurisdiction 2

Statutes Involved 2

Summary Statement of the Matter Involved..... 3

Questions Presented 5

Reasons for Granting Writ of Certiorari..... 6

Brief in Support of Petition for Writ of Certiorari..... 9

Factual Background of the Case..... 9

Argument 19

First Point and Second Point: I. Where the state court, in its judgment rendered November 29, 1937, directed public officials of the state to make annual direct ad valorem tax levies for the discharge of a public debt, and specifically retained jurisdiction of the cause for the purpose of requiring the officials to levy and collect the taxes, is not a bankruptcy decree which restrains and annuls enforcement of that judgment, an interference with the governmental and political affairs of the state, prohibited by Section 83(c) of the Bankruptcy Act?..... 19

II. Where the state court in 1937 determined the relationship of the R.F.C. to the bankrupt and to the petitioners by final judgment, and therein determined the R.F.C. holds the original bonds "as collateral security for a loan" and that the loan has been paid as to all obligations up to January 1, 1937, and that the district has funds to pay its debts, is not the plea of res judicata available in a bankruptcy court so as to limit the claim of the R.F.C. to the amount of the loan, and to make its consent as holder for full face value of the original obligation a nullity? 19

Third Point: Where the original creditors surrendered their bonds for the account or order of the bankrupt upon payment being received from funds loaned by the

Page

R.F.C., are not the original securities owned and held by the bankrupt, so as to prevent their being counted in the consent, especially in view of the plea of res judicata? 20

Fourth Point: Is a plan of composition fair where lands within the taxing agency have on the market values vastly in excess of the debt, where the taxpayers have independent means and the evidence shows a steady great increase in population? 21

Fifth Point: Is a plan of composition fair which allows one creditor 100% of his investment in bonds bearing interest at 4%, which bonds are very desirable security on the present day market, while it requires petitioners to surrender their bonds and take cash?..... 22

Sixth Point: Where the bankrupt borrowed money from the R.F.C. on the security of original bonds representing the indebtedness to be composed, and during the proceedings but before the interlocutory decree became final, the bankrupt paid the R.F.C. in full and liquidated the original indebtedness with new money borrowed from private bankers, is not the case moot, and is there not a failure of consent of the majority bondholders, and should not the whole proceeding be set aside and dismissed? If not dismissed, does not the saving made by the 3¼% bonds belong to the creditors?..... 23

Conclusion 24

Table of Authorities Cited

Cases

	Pages
Adirondack Railway v. New York, 176 U. S. 335	16
Consolidated Rock Co. v. Dubois, 312 U. S. 510	3
Green v. City of Stewart, 135 Fed. (2d) 33	24
Oklahoma v. Texas, 256 U. S. 70	16
Schubert v. Vista Irrigation District (R. 22, 25)	13
State of Texas v. Tobasco Consolidated School Dist., 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58	6, 7, 22
U. S. v. Bekins, 304 U. S. 27, 58 S. Ct. 811	16
West Coast Life Ins. Co. v. Merced Irrigation District, 114 Fed. (2d) 654	6, 22
Wright v. Coral Gables, 137 Fed. (2d) 192, affirmed March 13, 1944, 64 S. Ct. 779, 321 U. S. 753	24

Codes and Statutes

Act of June 22, 1938, c. 575, Section 3(b) (52 Stat. 940)	2
Bankruptcy Act of 1898, Chapter IX, as amended (11 U.S.C., Sections 401-404)	3
Bankruptcy Act, Section 83(c)	5
Cal. Stats. 1897, p. 254, as amended (Division 11, Water Code of California, Chap. 368, Cal. Stats. 1943)	3
California Irrigation District Act, Section 39	16
Judicial Code, Section 240(a) (28 U.S.C.A., Sec. 347(a))	2
Municipal Bankruptcy Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84	2
50 Stat. 654	16
11 U.S.C.A. 403(d)	21

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

H. M. LORBER, ROY R. DEMPSTER, J. R. MASON, ARTHUR LORBER, FRANCES V. WHEELER, GILBERT MOODY, J. B. BLOOM, as Trustee of the Bloom Company, a Trust Estate, and STANLEY W. LANDIS,
Petitioners,

vs.

VISTA IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decision (R. 481) of the Circuit Court of

Appeals for the Ninth Circuit, made in the above entitled cause on June 20, 1944, which denied the motion of petitioners for an order dismissing the proceedings, etc., and affirmed the interlocutory decree of the District Court in favor of the respondent against the appellants, rendered herein (R. 54, 438) on March 6, 1941, amended January 20, 1943. Rehearing denied August 15, 1944. (R. 482.)

OPINION BELOW.

Opinion of Circuit Court of Appeals, 127 Fed. (2d) 628, 143 Fed. (2d) 282.

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered June 20, 1944. (R. 481.) The mandate was stayed until disposition of the case by this Court (not in printed record). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code. (28 U.S.C.A., Sec. 347 (a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Section 3 (b). (52 Stat. 940.)

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent Vista Irrigation District, a California irrigation district and a public corporation and state governmental agency (organized under Cal. Stats. 1897, p. 254, as amended, known as "the California Irrigation District Act", being presently Division 11, Water Code of California, Chap. 368, California Statutes of 1943), for readjustment of its bond obligations under what is now Chapter IX of the Bankruptcy Act of 1898, as amended. (11 U.S.C., Sections 401-404.)

An interlocutory decree confirming the irrigation district's plan of composition was entered by the District Court on March 26, 1941. (R. 53-64.) An appeal was taken to the Circuit Court of Appeals for the Ninth Circuit and that Court affirmed in part (R. 403) and rendered its opinion, 127 Fed. (2d) 628, and remanded the cause for further proceedings on April 16, 1942, on the basis of the decision of this Court in *Consolidated Rock Co. v. Dubois,* 312 U.S. 510, directing the trial Court to make its findings to support the conclusion that the payments provided for in the plan of composition were all that the district could reasonably pay in the circumstances. The lower Court determined that the evidence should bring the case down to date, respecting the tax-collecting ability of the district (R. 406) and the Circuit Court in its opinion appears to have approved this position. (R. 472-474.) The trial Court held its hearing on the remand on July 8, 1942, and thereafter made return of its pro-

ceedings in the Circuit Court in the form of additional findings (R. 432) and an amendment of the decree. (R. 438.)

While the matter was thus pending in the Circuit Court, the petitioners made a motion to dismiss the proceedings (Vol. III, R. 443) on the ground that there was no longer any valid consent to the plan of composition; that the cause had become moot as the original obligations had been entirely discharged; and that the bankrupt had liquidated its indebtedness completely and entirely (R. 443-446), having borrowed new money from a new syndicate and discharged its indebtedness to the Reconstruction Finance Corporation, which agency had made the original refinancing loan (R. 446); and the district had received large financial benefits through this new borrowing for which it had failed to account to its creditors.

The motion was denied. (R. 481.)

A petition for rehearing for clarification of the opinion was presented, and this was denied August 15, 1944. (R. 482.)

The matter involved concerns questions of the plan of composition itself, including in particular a question as to whether only one or all creditors are not entitled to be paid in refunding bonds; a question of the jurisdiction of State Courts; and also the question whether where pending the proceedings the bankrupt entirely liquidates the consenting bonds the bankruptcy proceedings should be dismissed.

QUESTIONS PRESENTED.

I. Where the State Court, in its judgment rendered November 29, 1937, directed public officials of the State to make annual direct *ad valorem* tax levies for the discharge of a public debt, and specifically retained jurisdiction of the cause for the purpose of requiring the officials to levy and collect the taxes, is not a bankruptcy decree which restrains and annuls enforcement of that judgment, an interference with the governmental and political affairs of the State, prohibited by Section 83(c) of the Bankruptcy Act?

II. Where the State Court in 1937 determined the relationship of the R.F.C. to the bankrupt and to the petitioners by final judgment, and therein determined the R.F.C. holds the original bonds "as collateral security for a loan" and that the loan has been paid as to all obligations up to January 1, 1937, and that the district has funds to pay its debts, is not the plea of *res judicata* available in a Bankruptcy Court so as to limit the claim of the R.F.C. to the amount of the loan, and to make its consent as holder for full face value of the original obligation a nullity?

III. Where the original creditors surrendered their bonds for the account or order of the bankrupt upon payment being received from funds loaned by the R.F.C., are not the original securities owned and held by the bankrupt, so as to prevent their being counted in the consent, especially in view of the plea of *res judicata?*

IV. Is a plan of composition fair where lands within the taxing agency have on the market values

vastly in excess of the debt, where the taxpayers have independent means and the evidence shows a steady great increase in population?

V. Is a plan of composition fair which allows one creditor 100% of his investment in bonds bearing interest at 4%, which bonds are very desirable security on the present day market, while it requires petitioners to surrender their bonds and take cash?

VI. Where the bankrupt borrowed money from the R.F.C. on the security of original bonds representing the indebtedness to be composed, and during the proceedings but before the interlocutory decree became final, the bankrupt paid the R.F.C. in full and liquidated the original indebtedness with new money borrowed from private bankers, is not the case moot, and is there not a failure of consent of the majority bondholders, and should not the whole proceeding be set aside and dismissed? If not dismissed, does not the saving made by the 3¼% bonds belong to the creditors?

REASONS FOR GRANTING WRIT OF CERTIORARI.

1. There is a conflict in the decision of the Circuit Courts of Appeals on the question of whether all creditors are not equally entitled to receive refunding bonds where the refinancing loan is made by the R.F.C. In the instant case, and in *West Coast Life Ins. Co. v. Merced Irrigation District,* 114 Fed. (2d) 654, the Court held in the negative, but in the case of *State of Texas v. Tabasco Consolidated Independent*

School District, 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58, the Fifth Circuit Court of Appeals held in the affirmative. This divergence of opinion of the Circuit Courts should be disposed of.

2. It is a matter of great public importance to determine whether a public debtor, while in the process of going through bankruptcy, can entirely liquidate its indebtedness but still claim the benefit of the creditor consent and proof which it made at the hearing. It is also of public interest to determine whether or not such a circumstance does not require the dismissal of the entire proceedings. At any rate, the interest saving so made manifestly belongs to the creditors and not to the bankrupt.

3. It is respectfully submitted that while generally the principles to be followed by the lower Courts have been laid down by the Supreme Court, as to the gauge by which the fairness of a plan of bankruptcy of individuals or private corporations is determined, no such general principles have been laid down for municipal bankruptcy proceedings, and where the showing made is of great prosperity, and extremely high valuations and market sales of the property taxed as to shock almost the reason and conscience, is not a case presented that should be inquired into by this Court as to whether or not the basic principles have been followed?

4. This Court should determine, we respectfully submit, that the Bankruptcy Court must not interfere with the process of State Courts in its orders for levy of taxes.

Wherefore, petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record of the proceedings in said Court in the case numbered and entitled in its docket as number 9873, H. M. Lorber, Roy R. Dempster, J. R. Mason, Arthur Lorber, Frances V. Wheeler, Gilbert Moody, J. B. Bloom, as Trustee of the Bloom Company, a Trust Estate, and Stanley W. Landis, Appellants, v. Vista Irrigation District, Appellee, and that the decree of said Court be reversed and the said Court by this Court directed to dismiss the bill and grant the motion for dismissal of proceedings, and for such other relief as to this Court may seem proper.

Dated, Turlock, California,
October 16, 1944.

H. M. LORBER, ROY R. DEMPSTER, J. R. MASON, ARTHUR LORBER, FRANCES V. WHEELER, GILBERT MOODY, J. B. BLOOM, as Trustee of the Bloom Company, a Trust Estate, and STANLEY W. LANDIS,
Petitioners.

W. COBURN COOK,
Counsel for Petitioners.